

Order Ex.51 in S.C.S. No.206/2017

Read the application as well as objection filed.

Heard the learned advocate of plaintiff.

Heard the learned advocate of defendant.

1. Plaintiff applied for the recast of issue alleging that suit of plaintiff is of specific performance of agreement to sell as well as cancellation of registered sale deed and consent deed with declaration and injunction. Defendants No.14 to 19 filed written statement under Ex.13 and they raised the defence is not covered under Issue framed at Ex.46. Therefore, he asked to frame following issues and filed this application for reacts of issues.

1. Whether defendants prove that their sale deed Dtd.26/8/2016 No.618 & confirmation deed Dtd.26/8/2016 No.648 is legal and valid ?
2. Whether defendants prove that they are bonafide purchaser of disputed land ?
3. Whether defendants No.1 to 4 had any right to sell and for execute document in respect of their share in subject land after executing agreement to sell in favour of plaintiff ?

2. On other side defendants objected it vide Ex.52 on the ground that plaintiff filed suit after 9 years and without stating that defendants No.1 to 4 had executed sale agreement as the heirs of deceased Pravinbhai Jagjivandas Surti but plaintiff is not aware of the share of deceased in suit land. It is further stated that plaintiff is not aware of his share in suit land, hence, he is not entitled to contest the registered document of defendants. They dined any necessity to prove their documents and their bonafide behaviour and stated that plaintiff raised the objection regarding it, hence, it is his duty to prove that dispute. They

further alleged that suit of plaintiff is time barred, hence, they applied to add issue of limitation.

3. Considering the plaint with the written statement, it is cleared from the record that the suit is filed for the specific performance of unregistered agreement to sell executed in the year 2008 for the undivided suit land. The land was of non transferable at that time. He challenged the registered sale deed executed in the year 2016 in favour of other defendants. At this juncture some decisions of higher forum is necessary to note here.

* In Govind Anant Goltekar and Ors. Vs. Dasharath Deoba Goltekar (supra) while considering the provisions of Section 114 and 101 of the Evidence Act, it has been held that **registered sale deed** carries **presumption** of genuineness, burden to prove that it is not genuine lies on person who alleges that it is not so.

* In the case of [Vimal Chand Ghevarchand Jain and others vs. Ramakant Eknath Jadoo](#), (2009) 5 Supreme Court Cases 713, it has been held that a **registered deed of sale carries presumption** that the transaction was genuine one.

* In the case of Sita Sharan Prasad vs. Manorma Devi, 2012(2) BLJ 165, Patna High Court has held that a **registered sale deed is presumed** to have been validly executed with all its legal consequences. There cannot be presumptive invalidity attached to such a transaction. Such document remains valid on principle that apparent state of affairs is real state of affairs, until invalidating the same are established.

* Honble Supreme Court in Prem Singh v. Birbal and Others [(2006) 5 SCC 353, 2006 (2) KLT 863 (SC)] was stated: that there

is a **presumption that a registered document** is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. Same view was also taken in the case of Vishwanath Bapurao Sabale vs Shalinibai Nagappa Sabale & Ors. reported in (2009) 12 SCC 101 and Jamila Begum (D) Thr. Lrs. vs Shami Mohd. C.A. No. 1007 of 2013 decided on 14 December, 2018

4. It is clear position in law that register documents carries some presumption in its favour. The person who challenges it, has to prove is as illegal. Thus, the issues are framed as per the law and plaintiff is the person who challenges the registered sale deed and other deeds. Therefore, it is his duty to show illegality, hence, his contention to recast issue is declared in negative. Now the defendants have asked to add the issue of limitation. But as the court has framed issue No.5 regarding maintainability of the suit, which covers all the infirmity of law. Therefore, it is the decision of this court that separate issue of limitation is not necessary as the issue of legality of transfer of undivided share and restricted land and limitation are all involved, hence, it can be covered in one issue. Thus, following order is required to pass.

Order

The application is rejected with costs.

Pronounce in open court on Dt.29/6/2019

Place - Surat.

Dt. 29/6/2019

(Shilpa Mansukhlal Kanabar)
6th Additional Senior Civil Judge
Surat. GJ00814.